



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1912-98

9 December 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting that his reenlistment code be changed.

2. The Board, consisting of Ms. McCormick, Ms. Hare and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 30 November 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 June 1996 at age 19. In connection with his enlistment processing he was granted a waiver by the Bureau of Medicine and Surgery for a history of asthma. A form filled out on 9 July 1996 as a part of the asthma screening program indicates that he was having shortness of breath, chest pain and cough. Subsequently, a medical officer concluded that a pulmonary function test showed clinical and objective evidence of asthma and recommended his separation from the Navy. He was notified of separation processing on 11 July 1996 and elected to waive his procedural rights. The next day the separation authority directed an entry level separation because he "failed medical/physical procurement standards". Petitioner was so separated on 17 July 1996. At that time he was not recommended for reenlistment and was assigned an RE-4

reenlistment code.

d. Regulations allow for individuals enlisted with a medical waiver to be separated due to failure of procurement standards within 180 days of reporting to active duty as long as responsible medical authority determines that the condition for which the waiver was originally granted represents a risk to the member or prejudices the best interest of the Government.

e. Petitioner contends in his application that he does not have asthma and believes he failed the pulmonary function test because he had a cold. He states that in his youth he was prescribed an inhaler, but never needed to use it. He states he is active, played soccer and football, and has no problems with breathing or shortness of breath. He has submitted a statement from a doctor who has concluded that he has no symptoms of asthma and underwent a normal pulmonary function test.

f. Regulations allow for the assignment of an RE-3E or an RE-4 reenlistment code when an individual is separated because of a failure to meet procurement standards.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board weighed the evidence in the record which shows that he has asthma against the waiver granted by BUMED and the evidence submitted with the application which shows that he does not have asthma. The Board notes that his performance in recruit training was satisfactory except for the problems related to his physical condition. Given the conflicting determination, the Board concludes that the assignment of the RE-4 reenlistment code is inappropriate and it should now be changed to RE-3E. This waiveable code will allow him to be considered for enlistment but will alert recruiters that there is a problem that must be resolved before enlistment can be authorized.

Since there are conflicting diagnoses in this case, the Board further concludes that this Report of Proceeding should be filed in Petitioner's naval record so that all future reviewers will understand the reason for the change in the reenlistment code.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 17 July 1996 he was assigned an RE-3E reenlistment code vice the RE-4 reenlistment code now of record.

b. That this Report of Proceedings be filed in Petitioner's

naval record.

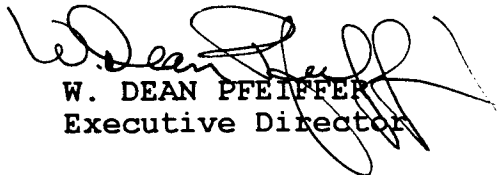
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director